

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD SEPULVEDA,

Plaintiff,

v.

CHEF'S WOK, INC., et al.,

Defendants.

Case No. [18-cv-06759-TSH](#)

ORDER DISMISSING CASE

On November 3, 2020, the parties participated in a settlement conference with Magistrate Judge Laurel Beeler, at which time they reached a settlement in full. ECF No. 57. As part of their settlement, the parties consented to Judge Beeler retaining jurisdiction to enforce the terms of settlement. Accordingly, the Court directed the parties to file a dismissal or status report by January 4, 2021. ECF No. 58. On January 4 Plaintiff filed a report indicating that Defendants' obligations under the parties' settlement agreement were to be completed on November 15, 2021, and the parties anticipated filing a stipulated judgment for dismissal by November 16. ECF No. 60. Based on Plaintiff's report, the Court ordered the parties to file a dismissal or updated status report by November 16. ECF No. 61. However, Plaintiff subsequently filed two status reports indicating the case was "ready to dismissed," but the attorney for Defendant Chef's Wok, Inc. had died and his law office informed Plaintiff's counsel that there was no other lawyer in the office who could sign a stipulation for dismissal. ECF Nos. 62, 63. Plaintiff stated that counsel for Defendants Huong Duong, Susan L. Lam, and De Lam indicated they were prepared to sign a stipulation for dismissal. Based on Plaintiff's reports, the Court set the matter for a case management conference on November 18 and directed the parties to file a case management statement by November 12.

1 As the parties did not file a case management conference statement by the deadline, the
2 Court issued an order noting that all indications are that this case has fully settled and should be
3 dismissed, but dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i) or (ii) is not
4 possible because Defendants filed answers and not all parties have signed a stipulation for
5 dismissal. ECF No. 65. However, if no party objected, dismissal under Rule 41(a)(2) would be
6 appropriate, with Judge Beeler retaining jurisdiction to enforce the terms of settlement.
7 Accordingly, the Court ordered the parties to file any objections to dismissal under Rule 41(a)(2)
8 by December 9, 2021. The Court stated that if no party filed an objection, it would dismiss this
9 case with prejudice, with Judge Beeler retaining jurisdiction over the settlement agreement.

10 On November 19, 2021, the parties filed a stipulation of dismissal with prejudice. ECF
11 No. 66. In their stipulation, the parties state that the terms of the settlement agreement have been
12 fulfilled and they jointly request the Court dismiss this action with prejudice with respect to all
13 parties, all claims, and all crossclaims. However, they note that Defendant Chef's Wok, Inc. was
14 dissolved with the California Secretary of State by its sole director, Richard Chiu,¹ that Bradley
15 Kass, the attorney of record for Chef's Wok and for cross-defendants Richard Chiu, Ken Zhao,
16 and Jack Chu, is deceased as of July 19, 2021, and that no provision has been made by his office
17 for another attorney to take over his files. Thus, Richard Chiu signed the stipulation both in
18 representation of himself as an individual and as owner and sole director of Chef's Wok.

19 Under Rule 41(a)(2), "an action may be dismissed at the plaintiff's request only by court
20 order, on terms that the court considers proper." In this case, dismissal is proper because all
21 parties, including Chef's Wok, entered into a settlement agreement that has been finalized. While
22 Chef's Wok has since been dissolved, Richard Chiu, its sole director, remains a defendant and is
23 bound by the terms of the settlement agreement. Further, although it is unlikely that any disputes
24 will arise, the parties agreed that Judge Beeler would retain jurisdiction to enforce the terms of
25 settlement. Accordingly, good cause appearing, this case is **DISMISSED WITH PREJUDICE**,
26 with Judge Beeler retaining jurisdiction to enforce the terms of the settlement agreement. The
27

28 ¹ See also <https://businesssearch.sos.ca.gov/CBS/Detail> (California Secretary of State website showing Chef's Wok, Inc. was dissolved on December 11, 2020).

Clerk of Court shall close the file.

IT IS SO ORDERED.

Dated: November 19, 2021


THOMAS S. HIXSON
United States Magistrate Judge

United States District Court
Northern District of California